IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

(1) S.B.Civil Misc. Appeal No.135/1986
Legal Representatives of Ashok Kumar & ors. vs. The Union of India & ors.

(2) S.B. Civil Misc. Appeal No.173/1989
Mool Singh & ors. vs. The Union of India & ors.

against the award dated 31.3.1986 passed by the learned Arbitrator (District & Sessions Judge, Jaipur) in the matter of acquisition.

Date of Judgment : August 04, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA, J.

Mr. Jitendra Chopra or the appellants.
Mr. Manoj Bohra for the respondent.
Mr. Mahendra Kumar for Mr. H.S.Balot for respondent no.8 in SBC Misc.Appeal No.173/89.

REPORTABLE

BY THE COURT:

The Government of India, requisitioned the agricultural land measuring 130.20 acres in the village Mithari Khurd, Jasoi and Data in the District Barmer in Rajasthan, in exercise of power under Section 3 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short "the Act of 1952") along with other lands. The lands involved in these two appeals are of Khasara nos.34 and 36. Said requisitioned land was taken possession of by the Defence Ministry in the year 1977. For this requisitioned land of khasara nos.34,36,37 and 51, measuring 133.20 acres (333 bighas), the rent was fixed as Rs.75.20 per bigha per

year. Subsequent to it, in the year 1981, it was decided that the said land be acquired for the defence purposes and, therefore, a notification under Section 7 of the Act of 1952 was issued by the Government of India and was published in the official gazette on 20.8.1981. The District Collector, Barmer fixed the compensation amount for the land in question @ Rs.140/- per bighas by order dated 19.5.1982. Said compensation was not acceptable to the land owners and, therefore, ultimately, the arbitrator was appointed under Section 8(1)(b) of the Act of 1952 to determine the compensation amount to be paid to the land owners for their lands. The learned arbitrator by award dated 31.3.1986 divided the land of khasara nos.34,37,51 and 36 in three categories. For land of khasara no.34, the compensation has been awarded @ Rs.350/- per bighas, for khasara nos.36 and 37, the compensation has been awarded @ Rs.450/- per bigha whereas for khasara no.51, the compensation has been awarded @ Rs.600/- per bigha. It will be relevant to mention here that the learned arbitrator took into consideration the original land classification as basis for determination of the compensation despite the fact that before the land was acquired under Section 7 of the Act of 1952, the land was already requisitioned and was taken possession of by the Union of India under the Act of 1952 on rental basis and was put to use for different purposes than the land as recorded in the revenue record.

The controversy in these two appeals raised by the land owners is only to the effect that whether the learned arbitrator who passed the award fixed different rates for land of khasara nos.34 and 36, has committed error of fact or and error of law.

According to the appellant, once the compensation has been awarded to the land owners of khasara no.51 @ Rs.600/- per bigha, in the same land acquisition proceeding, the arbitrator should not have taken into consideration the original land classification recorded in the revenue record ignoring the admitted and real fact about the nature of the land. According to the appellant, the land of the appellants was requisitioned by the Union of India for defence purposes and was put to use differently than the agriculture and land of all agricultural fields having different locations and different areas of different khatedars were put together and further put to use for same purpose. The appellants also submitted before the learned arbitrator that compensation should have been determined by taking the rent as basis for determination of market rate of the land in question. Even if the compensation cannot be determined on the basis of rental basis even then there was no justification for awarding different compensation for the land similarly situated and put to use.

The learned counsel for the respondents contesting the issue, vehemently submitted that the land involved in these acquisition

proceedings were entirely different. By requisitioning the land, the nature of the land has not changed. It is also submitted that the learned arbitrator has not accepted the plea of the land owners for determination of the compensation on the basis of the rent paid for the land. It is also submitted that the learned arbitrator has committed serious error of law in awarding interest @ 6% whereas under the Act of 1952, there is no provision for payment of interest. It is also submitted that before the acquisition proceeding initiated in this matter, the land was already taken possession of by the Defence Ministry by requisitioning the land under the Act of 1952 and the rent was payable to the land owners as per the Act of 1952, therefore, there was no reason for awarding the interest.

The learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court delivered in the case of Union of India vs. Karam Singh and others (AIR 1997 SC 2655), wherein Hon'ble the Apex Court held that neither interest nor solatium can be awarded in a case where the land is acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952 by applying the analogy or the provisions of the Land Acquisition Act, 1894 as amended in 1984.

The learned counsel for the respondent further submitted that this Court has ample power under Order 41 Rule 33,C.P.C. to grant the relief or mould the relief and also to grant relief to the respondent, who

has not appealed against the order or judgment of the court below. It is also submitted that the appellate court can correct the error which has been committed by the court below even in a case where no cross appeal or cross objection have been filed. The learned counsel for the respondent relied upon the judgment of this Court delivered in the case of The New India Assurance Co. Ltd.,Jodhpur vs. Mst. Kamla & ors (2001 (5) WLC 252).

The learned counsel for the respondents also submitted that Hon'ble the Apex Court in the case of Union of India vs. Ajaib Singh and others ((1996) 9 SCC 638) held that where there was no delay on the part of the State in appointment of arbitrator, the claimants are not entitled to solatium and interest. This has been held by the Hon'ble Apex Court in a case under the Requisitioning and Acquisition of Immovable Property Act, 1952.

So far as the award of interest is concerned, the learned counsel for the appellant submitted that the learned arbitrator has awarded interest merely @ 6% per annum, that too, from the date of notification, i.e. from 20.8.1981 upto the final payment of the land owners. No appeal has been preferred by the Union of India to challenge the said part of the award. Therefore, the plea raised by the respondent, after such an inordinate delay, cannot be entertained. It is also submitted that even if it is held that no interest can be paid in a matter where the

land is acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952, even then in view of the judgment of the Hon'ble Apex Court delivered in the case of Girdhari & ors. vs. Union of India & ors. (2005 CDR 645(SC) , the interest @ 9% per annum has been awarded by the Hon'ble Supreme Court, in the same proceeding when the land was acquired under Section 7(1) of the Act of 1952. It is also submitted that in another judgment in the case of Union of India vs. Chajju Ram (Dead) by Lrs. And ors ((2003) 5 SCC 568), wherein Hon'ble the Apex Court, after holding that the solatium and interest cannot be awarded when the land is acquired under the Defence of India Act, 1971, but still the Hon'ble Apex Court observed that in view of the long delay and peculiar fact situation, the amount paid to the land owners shall not be recovered.

I considered the submissions of the learned counsel for the parties and perused the record also.

This fact is not in dispute that the lands of khasara nos.34,36,37 and 51 of the same village Mithadi Khurd of District Barmer, were requisitioned under the Act of 1952 and possession was taken over by the Defence Ministry on 18.3.1976. The notification under Section 7 of the Act of 1952 was published on 19.12.1977, which is after more than one year from taking possession of the land by the Defence Ministry. The said notification was published in the official gazette on 20.8.1981

which is after more than three years. The arbitrator was appointed by the Government by order dated 10.5.1984. The award was passed by the learned arbitrator on 31.3.1986 (in the original award though the date has been typed as January 21, 1985 but the arbitrator has sighed each page of the award running in 18 pages and put the date by his own handwriting as 31.3.1986).

Admittedly the land before it was sought to be acquired under Section 7 of the Act of 1952, it was requisitioned under the same Act of 1952 and all land of different khasara numbers were put to use for non-agricultural purposes. The land classification as recorded for the land in the revenue record lost its significance and importance when the land was requisitioned by the Union of India and was taken possession of from the land owners. The date on which the notification under Section 7 of the Act of 1952 was issued, the land was not agricultural land or was not the land in use as shown in the revenue record. Therefore, the land classification as given in the revenue record was absolutely irrelevant. It was the duty of the revenue authorities to record the changes in the revenue record because of the subsequent development. In this case, if the land continued to be recorded as agricultural land of different categories, irrigated or un-irrigated or even waste land, that entry for the land does not disclose the correct nature of the land. The learned arbitrator proceeded on the revenue entries by ignoring the subsequent

development which took place by requisitioning the land. Therefore, the learned arbitrator committed serious error of fact as well as error of law. In view of the admitted facts, the requisitioning the land by the Union of India for defence purposes and taking possession of land by the Defence Ministry. The land nature as on the date of acquisition under Section 7 of the Act of 1952 was same for all the land of khasaras mentioned above.

Once the Land Acquisition Officer held that the one land out of same chunk of land can have the market value @ 600/- per bigha, then there was no reason for giving less amount to the land owners of the land whose land have been acquired under the same land acquisition proceeding. It will be worthwhile to mention here that the Union of India has not preferred appeal to challenge the compensation awarded to the land owner of khasara no.51 to whom compensation has been awarded @ Rs.600/- per bigha. Therefore, that rate is the final rate accepted by the Union of India for the land which was taken possession of by the Union of India under the Requisitioning and Acquisition of Immovable Property Act,1952 and which was acquired under the same Act by exercising power under Section 7(1) of the Act of 1952. Normally there must be uniformity in the matter of award of compensation unless there are reasons to grant different compensation for different land and for that purpose, the land use as well as location and other factors can

be taken into account. In this case, the land is adjoining land as well as was put to use for same purpose before it was acquired, therefore also, there was no reason for granting different rate of compensation to the land owners appellant.

In view of the above, it is held that the appellant of land of khsara nos.34,36 and 37 shall also be entitled to compensation by calculating quantum @ Rs.600/- per bigha.

So far as interest part is concerned, it is not disputed by the learned counsel for the appellant also that in the Act of 1952, there is no provision for award of interest.

The learned counsel for the respondent also relied upon the judgment of the Hon'ble Apex Court wherein it has been held that in case where there is no delay, the interest cannot be awarded. The judgment relied upon by the learned counsel clearly shows that on equitable ground, the interest was allowed by Hon'ble the Apex Court in one case and in another case, even after holding that interest cannot be awarded but the amount of compensation, in cases where land is acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952, still did not allow the government to recover the amount of interest paid to the land owners. Therefore, it is not a case where this Court should invoke power under Order 41 Rule 33, C.P.C. when the respondent-Union of India has not challenged the award of

interest as awarded to the land owner of khasara no.51 and the award of interest in favour of land owner of khasara no.51 has become final.

In view of the above, in the peculiar facts and circumstances of the case that when the award of interest in favour of land owner of khasara no.51 has become final and cannot be set aside by this Court even by exercising power under Order 41 Rule 33, C.P.C., there is no justification for setting aside the direction to pay the interest to the land owners that too @ 6@ per annum. In addition to above, it is clear that the acquisition proceedings were initiated in the year 1975, even the gazette notification was published in the year 1981 and the award was passed in the year 1986. Therefore, in view of such delay also, the claimants are entitled to interest and there is no justification for denying the interest to the land owners.

Therefore, both the appeals are allowed. The respondents are directed to pay the compensation to the land owners by calculating the cost of the land @ Rs.600/- per bigha for their agricultural fields. Rest of the award dated 31.3.1986 is upheld. The land owners shall also be entitled interest @ 6% per annum from the date of this order till the enhanced amount of compensation is paid to the land owners.

(PRAKASH TATIA),J.

mlt.